

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES

SPECIAL MEETING – NOVEMBER 1, 2012

A Special Meeting of the Bal Harbour Village Council was held on Thursday, November 1, 2012, at the Bal Harbour Village Hall Council Chambers (655 – 96th Street, Bal Harbour, Florida).

1. CALL TO ORDER/ROLL CALL: The meeting was called to order at 8:31 a.m. by Mayor Rosenfield. The following were present:

Mayor Jean Rosenfield
Assistant Mayor Joni D. Blachar
Councilwoman Patricia Cohen¹
Councilman Martin Packer²
Councilman Jaime M. Sanz

Alfred J. Treppeda, Village Manager
Ellisa L. Horvath, MMC, Village Clerk
Thomas Hunker, Police Chief
Richard J. Weiss, Village Attorney
Matthew Pearl, Village Attorney

As a quorum was determined to be present, the meeting commenced.

2. PLEDGE OF ALLEGIANCE: The Pledge was led by Village resident Anthony Gillam.

3. UPDATE REGARDING LETTER FROM THE U.S. DEPARTMENT OF JUSTICE: Mayor Rosenfield noted that the Council was disturbed by the articles in the Miami Herald. She advised that the Council was being proactive about addressing the allegations. She encouraged the residents to have confidence in their government and Police Department. She knew the residents expected the Council to ask questions and provide transparency in the results of the review. Mayor Rosenfield recommended that the Village retain an outside law firm, as special counsel, to review the report from the DOJ (United States Department of Justice). She reported that the Council, Village Manager, and Village Attorney had recommended that the law firm of Gelber, Schachter and Greenberg be hired, to conduct the review.

A motion was offered by Mayor Rosenfield and seconded by Assistant Mayor Blachar to hire the law firm of Gelber, Schachter, and Greenberg as special Counsel, with fees to be negotiated by Mr. Weiss. The motion carried (4-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilman Sanz yes; Mayor Rosenfield yes; Councilwoman Cohen yes; and Councilman Packer absent.

Councilman Packer arrived.

¹ Councilwoman Cohen participated via telephone.

² Councilman Packer arrived during the Update Regarding Letter from the U.S. Department of Justice.

Mr. Treppeda reviewed the following timeline:

- August 17, 2011 the DOJ informed the Village they were conducting a routine compliance review of the equitable sharing program;
- March 2012 the DOJ issued a subpoena for records related to the equitable sharing program; and
- October 2012 the DOJ provided a letter concerning the findings of their investigations, but had not provided the audit report. They advised that a Freedom of Information Act would have to be made, for the audit to be obtained. The Village Attorney had requested the report. Once the audit was received, the Village could work to formulate a report to the findings.

Mr. Treppeda reported that the DOJ made the Village Police Department ineligible for participation in the equitable sharing program and had requested reimbursement of \$4,227,619.00, in equitable sharing money. He added that the DOJ would be checking for additional amounts that may be owed, for expenditures made since the end of their original audit. He reported that the forfeiture fund had a \$2 million balance. He clarified that the expenditures in question were not the items that had been approved by the Village Council at meetings, but were for operational expenses of the unit. He clarified that the Village was fully cooperating with the DOJ.

Mr. Treppeda reported that he had stopped items funded with forfeiture funds and the following items had been addressed:

- Police Department overtime was prohibited, except for unavoidable situations, such as court or special events;
- The contracts for two officers of the forfeiture unit were cancelled;
- The Task Force is inactive;
- A 30-day notice was provided to the accreditation consultant, which was paid with forfeiture funds;
- Other items paid with forfeiture funds will be identified and discontinued, if possible; and
- The Council engaged outside counsel to represent the Village, in dealing with the DOJ.

Mr. Treppeda reported that the Village would have been entitled to \$9 million in forfeiture funds, if it wasn't ineligible to participate in the program. He requested Council direction for the outside counsel to negotiate the fastest way to settle the matter, or to work towards securing all or some of the \$9 million (in pending forfeiture proceeds).

Mr. Treppeda noted that the DOJ had requested the Village's plan, within two weeks.

Chief Tom Hunker took full responsibility for the audit and noted that the Police Department

hadn't done anything wrong. He reviewed a Powerpoint presentation (Tri-County Money Laundering Task Force – Stats of Seizures & Arrests listed by State 2009-2012), which included the task force accomplishments (arrests as well as drugs and money seized), the money laundering process, and undercover operations. He explained that it wasn't about the money, but was about getting drugs off the streets and decreasing crime. He reported that the Tri-County Task Force was a separate entity and followed rules, procedures, and guidelines. Chief Hunker reported that he had not received the audit report from the DOJ yet and had only received the subpoena, which the DOJ had said was not responded to in a timely manner. He discussed the letter received from DOJ, dated October 26, 2012.

Chief Hunker reviewed the money laundering process on the Powerpoint presentation.

Chief Hunker explained that everything purchased with the forfeiture money had gone through the process. He clarified that the dispute was that the DOJ believed that the contract employees should not be paid, using forfeiture funds. He spoke in favor of someone reviewing everything that was done. He noted that they weren't supplementing the Village budget with the money, but were providing additional services for the residents. He reported that other local agencies were doing the same thing, with officers in task forces. He clarified that the Village created its task force, because he believed that they could do it better, which the statistics showed. He thought that in doing so, it may have created some discourse with others. He hoped that the Council and community had confidence in him.

Kenneth Each, City of North Miami (776 NE 125th Street) - former Police Officer and Police Chief, spoke in favor of Chief Hunker and supporting him. He spoke against the nonsense in the newspaper.

Brian Mulheren, 10245 Collins Avenue, spoke in favor of appointing a federal monitor. He spoke against taxpayer dollars being used for an outside law firm. He spoke against the Village having its own task force with Glades County, since there weren't enough officers to patrol the Village, and a few officers could be assigned to an established task force. He questioned the action taken by the Village regarding its own audit and why the residents weren't notified about it. Mr. Mulheren discussed the Miami Herald suit against the Village, which the taxpayers had to pay for.

Dina Cellini, 211 Bal Cross Drive, clarified that the items in the letter from DOJ were not allegations, but were findings. She reviewed the findings listed in the letter from the DOJ, including: the Village Police Department repeatedly failed to cooperate with the DOJ, the OIG (Inspector General) concluded serious financial deficiencies and compliance failures by both Bal Harbour Police and the Tri-County Task Force, they brought in over \$56 million without adequate written policies or procedures, prosecutorial oversight, or audits of undercover bank accounts, and they failed to follow the Glades and Village Memorandum of Understanding. She highlighted that the Village was dealing with cash and that abuses could occur, which is why strict procedures and guidelines were in place, which the Village didn't follow. Ms. Cellini discussed the overtime for the officers who counted the money. She reported that the audit by Village Auditors Marcum LLP found serious and material weaknesses. Ms. Cellini spoke against spending more money. She suggested that the Weiss Serota (Village Attorneys) malpractice carrier be put on notice, since they had approved all of the expenditures. She also spoke in favor of letting Chief Hunker know that he couldn't do whatever he wanted.

Ms. Cellini discussed a complaint filed by Bal Harbour Police Officer Ray Fernandez, in Bal Harbour Village Special Council Meeting Minutes 11/01/2012

May, which alleged some of the same lack of oversight that the DOJ had concluded. She urged the Council to send Chief Hunker on his way.

Doug Rudolph, 212 Bal Bay Drive, spoke in favor of looking into the issue and having an independent law firm (attorney) to represent the Village, before jumping to conclusions and making decisions. He noted that those attending the Council meetings were aware of the forfeiture program and benefited from it.

Larry Jaffee, 10175 Collins Avenue, didn't believe that they were allegations, but were findings by a federal government. He questioned what the Village did, in response to the findings of its own audit, regarding the discrepancies. He also questioned why the Police Department failed to cooperate with the DOJ. He spoke against the residents having to pay and spoke in favor of a substantial investigation by the federal government, not paid by the taxpayers. He suggested that the violator(s) pay the amount.

Steve Greenberg, 9800 Collins Avenue, requested the amount that the Village owed and noted that the residents didn't want taxpayer dollars to be used. He suggested that Doug Rudolph pay the amount, since he supported Chief Hunker.

Dan Holder, 24 Bal Bay Drive, spoke in favor of a full investigation and withholding judgment, until the facts were in. He spoke in favor of hiring outside counsel, paid by the Village.

Dr. Michael Wittels, 78 Camden Drive, spoke against judgment, based on the Herald articles, before all the facts were presented. He noted that the forfeiture expenditures were used to maintain a first class Police Department, not for personal use by the Chief or Officers. He clarified that the expenditures were approved by the Village Attorneys and Council. He spoke in favor of the Village being cohesive and the residents not speaking ill of the Village, since nothing had been proven. He spoke in favor of hiring outside counsel and the Village paying to do so.

Councilman Sanz voiced concern, because it was the DOJ making the allegations. He noted that the Council and the Village's reputation needed to be defended and cleared.

Assistant Mayor Blachar discussed the letter and spoke in favor of innocence, until proven otherwise. She noted that a full investigation would be conducted and spoke against residents making accusations. She clarified that nobody had complained when they had benefitted from the proceeds of the Task Force. Assistant Mayor Blachar explained that the items under review were the operational expenses of the unit and not the items that the Council had approved. She spoke in favor of supporting the Chief and discussed the positive qualities of the Police Department. She spoke in favor of hiring outside counsel to review the audit, when it was received. She clarified that the audit had not been received.

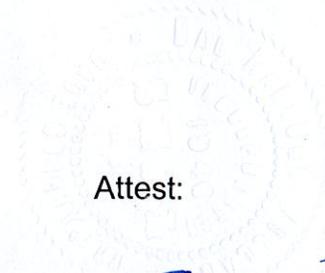
Councilman Packer agreed with everything voiced by the Council. He spoke against rushing to judgment and spoke in favor of hiring outside counsel to review the issue. He spoke against rushing to judge the Police Department, which was the finest on the east coast.

A letter from Councilwoman Cohen was read by Mrs. Horvath. In the letter, Councilwoman Cohen voiced concern regarding the allegations, but felt that all the facts needed to be brought to light, before hasty conclusions were reached, final decisions were made, or definitive actions were taken. She spoke in favor of the Village retaining outside counsel.

Mayor Rosenfield noted that she was pleased with the work that the Village law firm did and for recommending that outside counsel be hired. She read the following paragraph "our residents don't expect us to circle the wagons. They expect us to ask questions in a thoughtful and thorough manner and to provide transparency in whatever results from our review." She explained that was what the Village would be doing.

4. ADJOURN: There being no further business, a *motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to adjourn the meeting. The motion carried (4-0) and the meeting was adjourned at 9:27 a.m.*

Attest:




Ellisa L. Horvath, MMC, Village Clerk


Mayor Jean Rosenfield